

CUSTOMER NO.: 38107
EXPEDITED PROCEDURE

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of:)	Examiner: N. LAVERT
J. RUSSELL, et al.)	
)	Art Unit: 4123
Serial No.: 10/597,079)	
)	Confirmation: 6955
Filed: July 11, 2006)	
)	
For: ADAPTIVE)	
PHYSIOLOGICAL)	
MONITORING SYSTEM)	
AND METHODS OF USING)	
SAME)	
)	
Date of Advisory Action:)	
November 5, 2008)	
)	
Attorney Docket No.:)	Cleveland, OH 44114
PHUS040020US2 / PKRZ 2 01268)	November 21, 2008

PETITION FOR ENTRY OF
AMENDMENT C OF OCTOBER 17, 2008

Mail Stop: AF
Commissioner For Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Sir:

The Applicant hereby petitions for the entry of Amendment C of October 17, 2008.

On October 17, 2008, the Applicant filed Amendment C which placed three dependent claims in independent form including all of the subject matter of their parent claims. Because a dependent claim is read as including all of the subject

CERTIFICATE OF ELECTRONIC TRANSMISSION

I certify that this PETITION FOR ENTRY OF AMENDMENT C OF OCTOBER 17, 2008 and accompanying documents in connection with U.S. Serial No. 10/597,079 are being filed on the date indicated below by electronic transmission with the United States Patent and Trademark Office via the electronic filing system (EFS-Web).

December 18, 2008
Date

Patricia A. Heim
Patricia A. Heim

matter of its parent claim, it is submitted that placing a dependent claim in independent form including all of the subject matter of its parent claim does not change the scope of the claim and raises no issues that would require further search or consideration.

Specifically, claim 9 was placed in independent form including the subject matter of its parent claim 1, verbatim. Similarly, claim 27 was placed in independent form including the subject matter of claim 1. Claim 25 was similarly placed in independent form by adding the subject matter of its parent claim 24.

The last three lines of claim 1, as previously presented in Amendment B of May 28, 2008, calls for:

means for adaptively controlling the communication of the information about the detected biological signal in accordance with a level of the sensed physical activity as determined by said activity threshold detector.

The Examiner declined to enter Amendment C asserting that the addition of:

means for adaptively controlling the communication of the information about the detected biological signal in accordance with a level of the sensed physical activity as determined by said activity threshold detector.

to claim 9 will require further search and/or further consideration. That is, the Examiner denied entry on the grounds that it accurately incorporated subject matter from its parent claim.

Second, if Amendment C is denied entry, then Amendment B and claim 1 will remain in the application. The Examiner's assertions that the last three lines of claim 1 will require further search and/or consideration are a second grounds for entry of Amendment C. If, as the Examiner asserts in the Advisory Action, she has not fully searched the limitations of claim 1, then prosecution should be reopened for her to complete the examination of claim 1.

Claim 27 was also placed in independent form including the subject matter of its parent claim 1. Because the clause quoted by the Examiner is the last three lines of claim 1, it is submitted that the Examiner has not set forth a valid reason for denying entry of Amendment C.

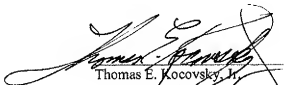
The Advisory Action states no objection to placing claim 25 in independent form.

Because the Examiner has failed to set forth valid reasons for denying entry of Amendment C and because Amendment C reduces the issues on Appeal by cancelling several claims and raising no new issues or issues that require further search or consideration, it is submitted that Amendment C should be entered for purposes of Appeal.

An early Decision instructing the Examiner to enter Amendment C is requested.

Respectfully submitted,

Fay Sharpe LLP



Thomas E. Kocovsky, Jr.
Reg. No. 28,383
1100 Superior Avenue, 7th Floor
Cleveland, OH 44114-2579
(216) 861-5582